Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)	
66745-43522	

I hereby certify that this correspondence is being electronically transmitted to the USPTO via the EFS Web on:	Application Number	Filed
July 11, 2007	10/734,775	12/12/2003
Signature: Joseph M. Rolnicki	First Named Inventor: Gatley, William Stuart	
Typed or printed name: Joseph M. Rolnicki	Art Unit: 3746	Examiner: Bertheaud, Peter John

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 32653.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Joseph M. Rolnicki
Signature

Joseph M. Rolnicki
Typed or printed name

(314) 552-6286
Telephone number

July 11, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Joseph M. Rolnicki
Reg. No. 32,653

In re application of: Gatley, William Stuart	:	
Serial No.: 10/734,775	:	Examiner: Bertheaud, Peter J.
Filed: December 12, 2003	:	Group Art Unit: 3746
For: MOTOR C OOLING AND EXHAUST DILUTING BLOWER HOUSING WITH HEAT SHIELD AND NOISE MUFFLER	:	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claim Rejections – 35 USC § 112

Claims 16- 20 were rejected as being indefinite for language of claim 16 that recites the guard outer sidewall 184 being positioned directly opposite the inlet vent opening 86' and covering the inlet vent opening. This subject matter of the invention is disclosed in the specification on page 21, line 21 through page 22, line 3, and in the drawing figures 15-18. The rejection questions how the vent opening can be completely covered but still allow air to flow into the housing through the vent opening.

The language of claim 16 is describing a structure that is similar to a chimney cap which covers over a chimney opening and prevents rain and snow from entering the chimney, but still allows exhaust fumes to exit the chimney. The positioning of the guard outer sidewall 184 opposite and over the vent opening 86' functions in substantially the same manner as a chimney cap in covering over the vent opening but allowing air through the vent opening. It is

therefore contended that the language of claim 16 complies with the requirements of the second paragraph of 35 USC § 112. It is also contended that the rejection of claims 16-20 is based on a factual error in understanding the functioning of the guard/muffler 176 of the invention, and therefore the rejection should be withdrawn and the claims allowed.

Claim Rejections – 35 USC § 102

Claims 1-15 of the application were rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of the U.S. Patent of Morgan No. 6,474,981. However, the Morgan reference does not identically show all of the elements of the invention recited in the rejected claims as required by patent case law.

> For a prior-art reference to anticipate, every element of the claimed invention must be identically shown in a single reference.
>
> *In Re Bond,* 910 F.2d 831, 15 U.S.P.Q. 2d 1566, 1567, 1568 (Fed. Cir. 1990).
>
> [A]ny degree of physical difference, however slight, invalidates claims of anticipation.
>
> *Ultradent Products, Inc. v. Life-Like Cosmetics, Inc.*, 39 U.S.P.Q. 2d 1969, 1980 (Utah 1996).

Of the rejected claims 1-15, claims 1 and 8 are independent claims. These independent claims recite elements of the invention that are not identically shown by the Morgan reference, and therefore under the above-cited case law, the Morgan reference does not anticipate these claims.

An important distinction between the subject matter of the invention and the subject matter of the Morgan reference is that the heater blower housing of the invention draws hot exhaust gases out of a heater and delivers the exhaust gases to an exhaust flue. Because the heater blower housing of the invention receives hot exhaust gases from a heater, the housing is provided with a layered wall with an interior layer in the housing exhaust chamber that receives the hot exhaust gases from the separate heater. This interior layer of the exhaust chamber insulates the exterior wall of the exhaust chamber from the hot exhaust gases and directs the

hot exhaust gases through the blower housing. This prevents the exterior surface of the housing from being a burn hazard.

In contrast to the above, the Morgan reference discloses a fundamentally different blower. The Morgan reference blower supplies ambient air to a combustion chamber of a furnace (see column 1, lines 26-29 of the Morgan reference). Thus, the construction of the blower in the Morgan reference is not designed to receive hot exhaust gases from a combustion chamber as is the blower housing of the invention. Because the Morgan blower does not direct hot exhaust gases, there is no need to provide the blower housing with a heat shield such as the interior layer of the blower housing of the invention.

Independent claim 1 recites a heater blower housing that is attachable to a separate heater. The blower housing comprises an exhaust compartment in the housing that has an exhaust compartment opening that receives exhaust gases from a separate heater when the heater blower housing is attached to the separate heater. This structural element of the invention is not identically shown by the Morgan reference. The Morgan blower is not designed to be attachable to a separate heater and does not have an exhaust compartment opening that receives exhaust gases when the blower is attached to a heater. As stated earlier, the Morgan reference discloses a blower that blows ambient air into a combustion chamber. The reference does not identically show a blower housing that is attachable to a separate heater, or a blower housing with an exhaust compartment with an opening to receive exhaust gases from the heater as recited in claim 1. This physical difference invalidates any claim that the Morgan reference anticipates claim 1 under the earlier cited call law.

Furthermore, claim 1 also recites that the exhaust compartment opening is positioned to receive exhaust gases from a separate heater when the blower housing is attached to the heater, and that the exhaust compartment is positioned to direct the exhaust gases to the fan compartment. Again, the Morgan reference does not identically show an exhaust compartment that receives exhaust gases when attached to a separate heater, much less an exhaust

compartment that directs exhaust gases to a fan compartment as recited in claim 1. This physical difference invalidates any claim that the Morgan reference anticipates the subject matter of claim 1.

Furthermore, the rejections of claims 1-15 state that the Morgan reference discloses a fan compartment 42, and a layered wall with "at least an interior layer, or what could be considered a heat shield (section of tube 42 that extends from 92 to end wall 58)." In view of this explanation of the rejection, it appears that the rejection is interpreting the combustion tube 42 of the Morgan reference as both the fan compartment recited in claim 1 and as the interior layer inside the exhaust compartment recited in claim 1. The rejection is based on interpreting one element disclosed in the Morgan reference as two separate elements recited in claim 1. This is a misinterpretation of what is disclosed by the Morgan reference and therefore the rejection is based on a factual error and should be withdrawn. Claim 1 and its dependent claims 2-7 are all allowable over the Morgan reference for the reasons set forth above.

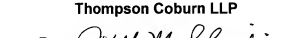
Independent claim 8, like claim 1, recites a blower housing that is attachable to a separate heater, where the blower housing comprises an exhaust compartment having at least a portion of a wall positioned to receive exhaust gases from a separate heater to which the blower housing is attached to direct the gases to the fan compartment. For the same reasons set forth above with regard to claim 1, these elements of the invention are not identically shown by the Morgan reference and the reference fails to anticipate claim 8.

Furthermore, claim 8 also recites a heat shield attached to the portion of the exhaust compartment wall. As explained above with regard to claim 1, the rejection of claim 8 is based on interpreting one element disclosed by the Morgan reference, i.e. the combustion tube 42, has two elements of the invention recited in claim 8, i.e. the fan compartment and the heat shield. Because the rejection of claim 8 is based on a misinterpretation of what the Morgan reference discloses, the rejection is based on a factual error and should be withdrawn and the claim allowed. Claim 8 and its dependent claims 9-15 are all allowable over the Morgan reference.

In view of the remarks presented herein, it is submitted that the rejections of claims 1-20 are made in error and should be withdrawn and the application allowed.

Respectfully submitted,

Thompson Coburn LLP

By: 

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